IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 716 OF 2007.

Gautamchand Bhikchand Bora
& another. ... Petitioners.

Versus.

Anandnagar Park Building No.22
Coop.Housing Soceity Ltd. ... Respondent.

Shri Jayesh B.Kocheta for the Petitioner.

Shri Nitin Deshpande for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 18th April, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. By this writ petition under Article 227 of the Constitution of India, the Petitioners have taken exception to the Judgment and Order dated 30th September 2006 passed by the learned Member of the Maharashtra State Cooperative Appellate Court, Mumbai. By the said order, the Petitioners have been restrained from exclusively using the parking space and open space on the ground floor of building No.22 of the Respondent-Society and from interfering with the rights of the society and other members as regards the use of open space and parking space.

2. The learned Advocate for the Petitioners pointed out that the Petitioners have transferred the flat held by them in the building of the Respondent-society to a third party. He states that the Petitioners have also

transferred their rights as regards the parking space/open space. He states that the purchaser/transferee has been put in possession by the Petitioners. He pointed out that as the 1st Respondent-society has not granted no objection certificate, transfer of membership has not been effected.

3. The impugned order is a discretionary order. Apart from the fact that the impugned order is based on a prima-facie consideration of the material on record, the Petitioners have admittedly parted with possession of their flat. Therefore, no case is made out for interference in this petition under Article 227 of the Constitution of India filed at the instance of the Petitioners.

4. The writ petition is rejected. It is, however, made clear that all contentions of the parties in the pending dispute are expressly kept open and the dispute will be decided without being influenced by the interim order passed by the Maharashtra State Cooperative Appellate Court and confirmation thereof by this Court.

Judge.